

APPLICANTS:
Bynum Run LLC and
O'Brien Property Management LLC

BEFORE THE
ZONING HEARING EXAMINER

REQUEST: Special Exception to locate a
day care center in the General Industrial
District

FOR HARFORD COUNTY
BOARD OF APPEALS

HEARING DATE: March 10, 2004

Case No. 5398

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Bynum Run LLC and O'Brien Property Management LLC

LOCATION: Parcel C-1, off of Robin Circle/Bynum Run Business Center, Forest Hill
Tax Map: 40 / Grid: 1F / Parcel: 382 / Lot: C1
Third Election District

ZONING: GI / General Industrial

REQUEST: A special exception pursuant to Section 267-53C(4)(b) of the Harford County Code to allow a day care center in a General Industrial District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant first testified William David O'Brien, who identified himself as the sole member of O'Brien Property Management LLC. Mr. O'Brien explained that O'Brien Property Management LLC was created in order to operate the Goddard School, a daycare center. O'Brien Property Management LLC is contract purchaser under a contract of sale with Bynum Run LLC to purchase the subject property, which is a 1.3 acre lot located at Water Tower Way and Granary Road.

Mr. O'Brien explained that the capacity of the proposed daycare facility will be 125 children, only to be reached once the school is in full operation. The children are typically divided into various classrooms, differentiated by age. There will be two separate playgrounds on the property, again divided by ages. Mr. O'Brien testified that all landscaping will be outside of the fence, which will surround the playground. The facility is to be managed by Mr. O'Brien and Anne Marie O'Brien, his wife. Both Mrs. O'Brien and all teachers will be trained and certified. The school itself is licensed by the Goddard System, a nationwide franchise of daycare facilities.

Mr. O'Brien believes that the facility will be beneficial to the citizens of Harford County, as it is designed to provide a high level of daycare services. Mr. O'Brien specifically agreed to the conditions recommended by the Harford County Department of Planning and Zoning.

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Next testified Michael Capp, who identified himself as Manager of Curriculum with the Goddard System. Mr. Capp identified the Goddard System as being a franchiser of high-quality daycare facilities, having approximately 162 schools throughout the country.

Mr. Capp described the typical capacity of their schools as 125 students, having a 3 to 1 student/teacher ratio. Mr. Capp generally described the training and certifications required by the staff. No bus transportation is allowed to the proposed school; all of the children must be walked in by a parent or care giver.

Mr. Capp was familiar with the subject property, believed that the proposed site presented no hazard to the children, and was in fact very similar to the typical site of other daycare facilities throughout the country.

Next for the Harford County Department of Planning and Zoning testified Nancy Lipski, who reiterated the written recommendation of the Department of Planning and Zoning, which was that the request be approved, subject to certain conditions. Mrs. Lipski stated that, in her opinion, the proposed facility would not be located near any industrial use which would constitute a potential hazard to the children in the facility. In fact, all of the adjoining properties are unimproved.

There was no testimony or evidence presented in opposition.

APPLICABLE LAW:

This special exception request is governed by Section 267-53C(4)(b) of the Harford County Code:

“(b) These uses may be granted in the CI, LI and GI Districts, provided that:

- 1. Access to the facility shall be from a public road.*
- 2. In order to minimize children’s exposure to noise and other emissions from roads, parking areas and industrial activities, the facility’s outdoor play area shall be fenced and shall be screened with a combination of evergreen and deciduous trees that are at least six feet high.*
- 3. Before opening the facility, its operator shall file emergency evacuation and sheltering plans for the facility with the Emergency Operations Division and the three closest volunteer fire and ambulance companies.*

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4. *The Board may deny an application if the proposed facility would be located near an industrial use that constitutes a potential hazard to the children in the facility.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this as all other similar requests.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants are fully able to meet the requirements of Section 267-53C(4)(b) of the Harford County Code.

- (b) *These uses may be granted in the CI, LI and GI Districts, provided . . .*

The subject property is zoning GI/General Industrial District.

1. *Access to the facility shall be from a public road.*

The property has access to two public roads, Granary Road and Water Tower Way.

2. *In order to minimize children’s exposure to noise and other emissions from roads, parking areas and industrial activities, the facility’s outdoor play area shall be fenced and shall be screened with a combination of evergreen and deciduous trees that are at least six feet high.*

The Applicants indicated their intent to screen the facility with appropriate fencing. Planting shall be outside of the fence, and shall conform with this provision of the Code.

3. *Before opening the facility, its operator shall file emergency evacuation and sheltering plans for the facility with the Emergency Operations Division and the three closest volunteer fire and ambulance companies.*

The Applicants are aware of this provision and have indicated their intent to comply with this requirement.

4. *The Board may deny an application if the proposed facility would be located near an industrial use that constitutes a potential hazard to the children in the facility.*

There are no potentially hazardous uses located near the facility.

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Having met the specific special exception requirements, the Applications must, nevertheless, meet the generalized requirements of Section 267-9I. The Applicant has made a showing of compliance with those conditions, as follows:

- (1) *The number of persons living or working in the immediate area.*

The subject property will be located in a light-industrial area. There will be no adverse impact on people living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The proposed facility is located adjacent to major roadways. There will be no impact on these roads.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The proposed use is permitted as a special exception in this district. There is no evidence of any potentially adverse fiscal impact on the county.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

None of these characteristics will be present.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The subject site will be serviced by Maryland State Police, Harford County Sheriff’s Office, and local volunteer fire departments. Public water and sewer is to the property and will service the subject property.

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposed use is allowed as a special exception in this zoning district.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

No showing was made of any potentially adverse harm to any such facilities.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the purposes of the Code, and the Harford County Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

There will be no environmentally adverse impact as a result of the proposed use.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

The Applicants request a special exception. A special exception is a use which is principally permitted in its particular district, provided all specific conditions are met. There is no showing of any harm greater at the proposed location than there would be, by this or a similar use, at any other permitted location within the zone. See Schultz v. Pritts, 291 Md., (1981).

Furthermore, a special exception, being a part of the County’s comprehensive zoning plan, shares a presumption that it is in the interest of the general welfare and is accordingly valid. See People’s Counsel v. Mangione, 584 A.2d 1318, (1991).

Accordingly, it is found that the request fully complies with the specific and general standards of the Harford County Zoning Code. Indeed, the facility as proposed should positively contribute to the educational resources available to Harford County residents, and presents absolutely no identifiable adverse consequence.

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CONCLUSION:

For the above reasons, it is recommended that the requested special exception be granted, subject to the following conditions:

1. The Applicant submit a detailed site plan and preliminary plan to be reviewed and approved through the Development Advisory Committee.
2. The Applicant submit a detailed landscaping plan for review and approval by the Harford County Department of Planning and Zoning. The fencing around the play area shall be located in a manner to allow for complete landscaping to be located on the outside of the fence.
3. The Applicant submit a final plat to the Harford County Department of Planning and Zoning for approval and recordation among the Harford County Land Records.
4. The specific conditions of Section 267-53C(4)(b) of the Harford County Code are applicable to the request, and shall be fully complied with.

Date: April 6, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner